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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

11 JOHN EDWARD ROACH,

12 Petitioner,

13 v.

14 ELDON VAIL,

15 Respondent.
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CASE NO. C09-5155 FDB

ORDER ADOPTING REPORT
AND RECOMMENDATION DENYING
MOTION TO DISMISS PETITION FOR
WRIT OF HABEAS CORPUS

18 The Magistrate Judge recommends that the Respondent's motion to dismiss Petitioner's
19 request for habeas corpus relief be denied. Respondent has not filed an objection.
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21 As detailed in the Report and Recommendation, the petition for habeas corpus relief
22 relates back to the date in which Petitioner was in custody. Therefore, the motion to dismiss
23 should be denied.

24 The Court, having reviewed the petition and amended petition, the motion to dismiss, the
25 response, the report and recommendation of the Hon. J. Richard Creatura, United States
26 Magistrate Judge, and the remaining record, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation;
- (2) The Respondent's Motion to Dismiss is **DENIED**. An answer to the Petition should be filed as soon as practical, and no later than 45 days from the date this Order is entered.
- (3) This Petition is referred back to Judge Creatura for further proceedings.
- (4) The Clerk is directed to send copies of this Order to Petitioner and to counsel for Respondent and note the due date for the answer on Judge Creatura's calendar.

DATED this 13th day of January, 2010.

A handwritten signature in black ink, appearing to read 'Franklin D. Burgess', written over a horizontal line.

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE